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DEPARTMENT OF HOMELAND SECURITY

COAST GUARD

33 CFR Part 165

[Docket Number-USCG-2013-0994]

RIN 1625-AA87

Security Zone; Mississippi River, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Captain of the Port of New Orleans (COTP New Orleans), under the authority of the Magnuson Act, , established a Moving Security Zone on the Mississippi river from mile marker 90.0 to mile marker 106.0 above head of passes (AHP), extending 100 yards in all directions from vessels being escorted by one or more Coast Guard asset or other federal, state, or local law enforcement agency assets. The COTP New Orleans will inform the public of the existence or status of the security zones around escorted vessels in the regulated area by Marine Safety Information Bulletins or Broadcast Notice to Mariners. This moving security zone is necessary to protect vessels deemed to be in need of escort protection by the COTP New Orleans for security reasons.

DATES: This rule is effective in the Federal Register on (insert date published in Federal Register) and effective with actual notice for purposes of enforcement on December 31, 2013 through April 14, 2014.

ADDRESSES: Documents indicated in this preamble are parts of docket [USCG-2013-0994] and are available online at www.regulations.gov. They are also available for inspection or copying at the Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Commander (LCDR) Kelly Denning, Sector New Orleans, at (504) 365-2392 or Kelly.K.Denning@uscg.mil. If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

AHP	Above Head of Passes
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
MM	Mile Marker
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Certain vessels qualifying as vessels requiring security escorts will transit through the COTP New Orleans area of responsibility. Minimal notice regarding vessel escort operations is customary for security purposes. Based on risk evaluations completed, and information gathered after evaluating the security needs for escorted vessels during a period of high activity on and around the waterway, the Coast Guard determined that a security zone is required, beginning December 31, 2013. This security zone is needed to protect persons and property, surrounding and including escorted vessels and their personnel from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature during vessel escort operations. The NPRM process would be contrary to public

interest by delaying the effective date or foregoing the necessary protections required for persons and property, surrounding and including escorted vessels and their personnel. Immediate action is necessary to provide both waterway and waterside security and protection for persons and property, surrounding and including escorted vessels and their personnel in this portion of the Lower Mississippi River during the listed time period.

For the same reasons, under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Providing a full 30 day notice would be contrary to the public interest because immediate action is needed to provide both waterway and waterside security and protection during vessel escort operations.

B. Basis and Purpose

The purpose of this rule is to provide enhanced protections related to escorted vessels transiting a portion of the Lower Mississippi River during times of increased activity on and around the waterway. During these times, certain vessels, including high capacity passenger vessels, vessels carrying certain dangerous cargoes as defined in 33 CFR part 60, tank vessels constructed to carry oil or hazardous materials in bulk,

and vessels carrying liquefied hazardous gas as defined in 33 CFR part 127 have been deemed by the COTP New Orleans to require escort protection while transiting the Lower Mississippi River between MM 90.0 to MM 106.0 AHP.

As an additional protective measure for all those transiting the waterway during the vessels escorts, the Coast Guard is establishing a temporary security zone restricting navigation in portions of the Lower Mississippi River in New Orleans, LA to provide both waterway and waterside security and protection from MM 90.0 to MM 106.0 AHP. This security zone is necessary to protect persons and property, surrounding and including escorted vessels and their personnel from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory security zones.

C. Discussion of the Final Rule

The Coast Guard has established a moving security zone extending 100 yards in all directions from each escorted vessel as it transits the Lower Mississippi River between MM 90.0 and MM 106.0 AHP. Vessel escorts will be performed by Coast Guard assets or other Federal, State or local law enforcement agency assets and will be clearly identified by lights, vessel markings, or with agency insignia. Persons and vessels will not be allowed to remain in or transit through this security zone without the permission of the COTP New Orleans or the on-scene Coast Guard or enforcement agency asset. A vessel may request permission of the COTP New Orleans or the on-scene Coast Guard or enforcement agency asset to deviate from the requirements of this rule. Deviations from this rule may be requested from the COTP New Orleans through the on-scene Coast Guard or enforcement agency asset, via VHF Ch. 67. If permitted to enter the security zone, a vessel must proceed at the minimum safe speed and must comply with the order of the COTP New Orleans or the on-scene asset. Vessels permitted to transit through the security zone shall maintain a distance of at least 50 yards from the escorted vessel.

The COTP New Orleans will inform the public through broadcast notices to mariners of each security zone, the enforcement period for the security zone as well as any changes

in the planned schedule.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). Due to its duration and location the impacts on routine navigation are expected to be minimal.

This rule is not a significant regulatory action because the rule will be in effect for short periods of time and notifications to the marine community will be made through broadcast notices to mariners. Deviation from this rule may be requested and will be considered on a case-by-case basis by the COTP New Orleans or the on-scene Coast Guard or enforcement

agency asset. Approved deviations will allow other vessels transiting the area to transit through the outer 250 yards of the security zone. Additionally, the security zone is located within the New Orleans Harbor Vessel Service Area where vessels are required to check in when entering the area or departing berth. This check in requirement can assist in early review and granting of permission to deviate from the rule. Therefore, the impacts on routine navigation are expected to be minimal.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels, intending to transit within 100 yards of an escorted vessel between MM 90.0 and MM 106.0 of the Lower Mississippi River. This security zone will not have significant impact on a

substantial number of small entities because of its location and short durations and notifications to the marine community will be made through broadcast notices to mariners. Deviation from this rule may be requested and will be considered on a case-by-case basis by the COTP New Orleans or the on-scene Coast Guard or enforcement agency asset. Approved deviations will allow other vessels transiting the area to transit through the outer 250 yards of the security zone. Additionally, the security zone is located within the New Orleans Harbor Vessel Service Area where vessels are required to check in when entering the area or departing berth. This check in requirement can assist in early review and granting of permission to deviate from the rule.

If you are a small business entity and are significantly affected by this regulation please contact Lieutenant Commander (LCDR) Kelly Denning, Sector New Orleans, at (504) 365-2392 or Kelly.K.Denning@uscg.mil.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination will be made available as indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

Part 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

PART 165 -REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

2. Add § 165.T08-0994 to read as follows:

§ 165.T08-0994 Security Zone; Mississippi River, New Orleans, LA.

(a) Location. Lower Mississippi River, from mile marker 90.0 to mile marker 106.0 above head of passes, extending 100 yards in all directions of escorted vessels.

(b) Effective date. This rule is effective in the Federal Register on (insert date published in Federal Register) and effective with actual notice for purposes of enforcement on December 31, 2013 through April 14, 2014.

(c) Periods of Enforcement. This rule will be enforced during vessel escorts performed by Coast Guard assets or other Federal, State or local law enforcement agency assets clearly identified by lights, vessel markings, or agency insignia. The Captain of the Port (COTP) New Orleans or a COTP New Orleans designated representative will inform the public through broadcast notices to mariners of security zone enforcement periods as well as any changes that may occur.

(d) Regulations. (1) In accordance with the general regulations in §165.33 of this part, remaining in, entry into, or transiting within this security zone is prohibited. Section §165.33 also contains other general requirements.

(2) Vessels requiring deviation from this rule must request permission from the COTP New Orleans through the on-scene Coast Guard or other agency asset, via VHF Ch. 67.

(i) Requests for deviation may include requests to enter, remain in, or transit through certain parts of the security zone. If a deviation from the rule results in permission to enter, remain in, or transit through the security zone, all vessels shall operate at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the Navigation Rules, and shall proceed as directed by the Coast Guard.

(ii) If authorized to operate within the security zone, no vessel or person is allowed within 50 yards of the escorted vessel. A specific request for deviation from this rule to operate within 50 yards of the escorted vessels must be requested and will be considered on a case-by-case basis by the COTP New Orleans.

(3) All persons and vessels shall comply with the instructions of the COTP New Orleans and designated personnel.

Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard, and local, state, and federal law enforcement officers on clearly identified law enforcement agency vessels.

(4) Informational Broadcasts. The Captain of the Port or a designated representative will inform the public through marine safety information bulletins or broadcast notices to mariners of the enforcement of the security zone.

Dated: December 30, 2013.

P. C. Schifflin,
Captain, U.S. Coast Guard,
Acting Captain of the Port New Orleans.

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